Supreme Court, U.S.
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No. 85-510

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

GERTIE SIMMONS and THOMAS BAKER,
Petitioners,

v.

THE CAMDEN COUNTY BOARD OF EDUCATION, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The Petitioners brought their employment discrimination case contending that their suspensions and terminations from employment as teachers in the Camden County School District were in retaliation for their having filed employment discrimination complaints with various federal agencies. The Respondents denied the retaliatory motivation charges and presented evidence at the Bench Trial of the Petitioners' unsatisfactory professional conduct and performance in their jobs. The District Court recognized that the Petitioners produced evidence of numerous specific acts of misbehavior or malfeasance on the part of other teachers employed by the Respondents,

similar in nature to the acts for which the Petitioners were discharged which received more lenient disciplinary treatment than the Petitioners. However, the District Court further found that none of this misconduct was cumulatively as serious as the infractions committed by both Petitioners.[1]

In affirming the District Court the Court of Appeals concluded that the lower Court had accepted the Respondents' testimony that the suspensions and discharges were because their infractions were perceived to be part of an ongoing pattern of conduct manifesting disrespect and open defiance of supervisory authority. *Simmons v. Camden County Board of Education*, 757 F.2d 1187 (11th Cir. 1985) at 1189. Further, the Appellate Court found that the burden of proof had been properly allocated by the District Court in accordance with *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

REASONS FOR DENYING THE WRIT

The ruling of the Court of Appeals is not in conflict with the ruling of this Court in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). The evidence as found by the District Court in the present case was distinguishable from the situation in *McDonnell Douglas* in that the present case did not involve substantial direct evidence of discrimination in connection with the suspensions and terminations, as in the present action there was only circumstantial evidence of retaliation. *Simmons*, 757 F.2d 1189. In the present action the District Court had specifically found that while there was misconduct on the part of other employees it was not of the same level of seriousness as the misconduct of the Petitioners.[2]

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[1] The Opinion of the United States District Court was filed with the United States Supreme Court on September 23, 1985 and attached as an appendix to the Petition for Writ of Certiorari.

[2] The Opinion of the United States District Court was filed with the United States Supreme Court on September 23, 1985 and attached as an appendix to the Petition for Writ of Certiorari.

Further, the Court of Appeals recognized that while a retaliatory discharge case under Section 704(a) of Title VII can be made where there is no direct evidence of retaliation, the Petitioners could make out a prima facie case by establishing (1) that there was a statutorily protected participation, (2) that an adverse employment action occurred, and (3) that there was a causal link between the participation in the adverse employment action. *Whatley v. Metropolitan Atlanta Rapid Transit Authority*, 632 F.2d 1324 (5th Cir., Unit B, 1980). However, this means that the causal link connection does not rise to the level of direct evidence which would have caused a shift in the burden of persuasion to the Defendant. Since this direct evidence was not established, the lower Court was proper in applying *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981) and *McDonnell Douglas v. Green*, 411 U.S. 792 (1973).

CONCLUSION

Since the District Court properly concluded that the Petitioners failed to meet the burden of overcoming the legitimate reasons articulated by the Respondents in a situation in which there was not substantial direct evidence of discrimination affecting an employment decision, the allocation of proof prescribed in *McDonnell Douglas* and *Burdine* was proper and the writ should be denied.

Respectfully submitted,

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